

**Introduced by Senator Dunn**  
(Principal coauthor: Assembly Member Koretz)

February 20, 2004

---

An act to amend Sections 17537.3, 22952, 22956, 22958, and 22963 of, and to add Section 22964 to, the Business and Professions Code, and to amend Section 308 of the Penal Code, relating to tobacco.

LEGISLATIVE COUNSEL'S DIGEST

SB 1821, as introduced, Dunn. Tobacco products: minimum legal age: advertising, display, and distribution limitations.

(1) Existing law prohibits a person from making various promotional or advertising offers of smokeless tobacco products without taking actions to ensure that the product is not available to persons under 18 years of age.

This bill would extend the applicability of those provisions to persons under 21 years of age, except those born before January 1, 1986.

(2) The Stop Tobacco Access to Kids Enforcement (STAKE) Act is designed to reduce the availability of tobacco products to minors through sales restrictions and enforcement activities. The act, among other things, prohibits the furnishing of tobacco products to, and the purchase of tobacco products by, a person under the age of 18 years, authorizes the assessment of civil penalties of a violation of the act, and makes the violation of certain provisions of the act a criminal offense. Existing law also makes it a crime to engage in activities for which civil penalties may be imposed under the act.

This bill would extend the applicability of the act and the criminal law described above to persons under the age of 21 years, except for those who were born before January 1, 1986. Because the bill would

change the definition of a crime, it would impose a state-mandated local program.

(3) The act requires the State Department of Health Services to conduct random, onsite sting inspections at retail sites, and requires the department to enlist the assistance of persons who are 15 and 16 years of age for this purpose.

This bill would, instead, authorize the department, until January 1, 2007, to enlist the assistance of persons who are 15 and 16 years of age, and, on and after January 1, 2007, to enlist the assistance of persons under 21 years of age, for these inspections.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares the  
2 following:

3 (a) Tobacco kills 480,000 Americans every year, causing more  
4 deaths than AIDS, alcohol abuse, illegal drug use, auto accidents,  
5 firearms accidents, fires, homicides, and suicides combined.

6 (b) Youth smoking has been identified as one of the most  
7 serious health care problems, and beginning to smoke as an  
8 adolescent is the primary cause of a lifetime smoking addiction.

9 (c) Three states, Alabama, Alaska, and Utah, have raised the  
10 minimum legal age for smoking above that required by California.

11 (d) Increasing the legal minimum sale age for tobacco will  
12 reduce the number of older youth who smoke and will help reduce  
13 sales of tobacco to younger children.

14 (e) Studies and surveys have shown that when states increased  
15 the legal minimum sale age for alcohol, drinking by high school  
16 seniors fell by over one-third and daily drinking in the same group  
17 fell more than 50 percent.

18 (f) According to a United States Surgeon General report,  
19 smokers have sampled cigarettes at the median age of 14 years, but



1 did not begin to smoke daily until the age of 18 years, and a small  
2 percentage began smoking after the age of 21 years.

3 (g) According to the American Lung Association,  
4 approximately 90 percent of smokers begin smoking before the  
5 age of 21 years, and those who begin smoking at an early age are  
6 more likely to develop a severe level of addiction to nicotine than  
7 those who start at a later age.

8 (h) The legal minimum sale age for alcohol in California is 21  
9 years of age, and persons under 21 years of age have visibly  
10 different drivers' licenses. Raising the legal minimum age  
11 required to purchase tobacco would ease the ability of merchants  
12 and vendors to check identification and would establish a uniform  
13 age for the purchase of both of these legal drugs.

14 (i) The state should continue its commitment to vigorous  
15 antitobacco education efforts and strict enforcement of existing  
16 laws limiting access by youth to tobacco products.

17 (j) It is in the interest of the public health to prevent adolescents  
18 from taking up the deadly habit of smoking in order to prevent their  
19 addiction to nicotine later in life.

20 SEC. 2. Section 17537.3 of the Business and Professions  
21 Code is amended to read:

22 17537.3. The following acts are prohibited:

23 (a) For ~~any~~ a person to ~~offer~~ make, as part of an advertising  
24 plan or program, a promotional ~~offers~~ offer of a smokeless  
25 tobacco ~~products which require~~ product that requires proof of  
26 purchase of a smokeless tobacco product unless ~~it~~ that product  
27 carries a designation that the offer is not available to ~~minors~~ any  
28 person under the age of 21 years. Each promotional offer shall  
29 include in any mail-in coupon a statement requesting purchasers  
30 to verify that the purchaser is ~~18-21~~ years of age or older.

31 (b) For ~~any~~ a person to honor a mail-in ~~and~~ or telephone  
32 ~~requests~~ request for a promotional ~~offers~~ offer of a smokeless  
33 tobacco ~~products~~ product, unless appropriate efforts are made to  
34 ascertain that a purchaser is over ~~18-21~~ years of age. For purposes  
35 of this subdivision, appropriate efforts to ascertain the age of a  
36 purchaser ~~includes~~ include, but ~~is~~ are not limited to, requests for  
37 a purchaser's birth date.

38 (c) For ~~any~~ a person by any means, as part of an advertising  
39 plan or program, to distribute a free ~~samples~~ sample of a  
40 smokeless tobacco ~~products~~ product within a two block radius of

1 any premises or facilities whose primary purpose is directed  
2 toward persons under the age of ~~18-21~~ years, including, but not  
3 limited to, schools, clubhouses, and youth centers, when those  
4 premises are being used for their primary purposes.

5 (d) For ~~any~~ a person to distribute, as part of ~~any~~ an advertising  
6 plan or program, *an unsolicited samples-sample of a smokeless*  
7 *tobacco products product* through a mail campaign.

8 (e) *This section may not be construed to prohibit a promotional*  
9 *offer of a smokeless tobacco product, the honoring of that*  
10 *promotional offer, or the distribution of samples, to a person who*  
11 *was born before January 1, 1986.*

12 SEC. 3. Section 22952 of the Business and Professions Code  
13 is amended to read:

14 22952. ~~On or before July 1, 1995, the~~ The State Department  
15 of Health Services shall do all of the following:

16 (a) Establish and develop a program to reduce the availability  
17 of tobacco products to persons under ~~18-21~~ years of age through  
18 the enforcement activities authorized by this division.

19 (b) Establish requirements that retailers of tobacco products  
20 post conspicuously, at each point of purchase, a notice stating that  
21 selling tobacco products to anyone under ~~18-21~~ years of age is  
22 illegal and subject to penalties *unless otherwise specified by law.*  
23 The notice shall also state that the law requires that all persons  
24 selling tobacco products check the identification of any purchaser  
25 of tobacco products who reasonably appears to be under ~~18-21~~  
26 years of age. The ~~warning signs-notice~~ shall include a toll-free  
27 telephone number to the ~~state~~ department for persons to report  
28 unlawful sales of tobacco products to ~~minors-any person under 21~~  
29 *years of age who was not born before January 1, 1986.*

30 (c) Provide that *the* primary responsibility for enforcement of  
31 this division shall be with the ~~state~~ department. In carrying out its  
32 enforcement responsibilities, the ~~state~~ department shall conduct  
33 random, onsite sting inspections at retail sites ~~and shall~~. *Until*  
34 *January 1, 2007, the department may enlist the assistance of*  
35 *persons who are 15 and 16 years of age in conducting these*  
36 *enforcement activities. On and after January 1, 2007, the*  
37 *department may enlist the assistance of persons that are 15 and 16*  
38 *who are under 21 years of age in conducting these enforcement*  
39 *activities. The state department may conduct onsite sting*  
40 *inspections in response to public complaints or at retail sites where*

violations have previously occurred, and *may* investigate illegal sales of tobacco products to ~~minors~~ *any person under 21 years of age* by telephone, mail, or the Internet. Participation in these enforcement activities by a person under ~~18-21~~ years of age shall not constitute a violation of subdivision (b) of Section 308 of the Penal Code for the person under ~~18-21~~ years of age, and the person under ~~18-21~~ years of age is immune from prosecution ~~thereunder~~ *under that section*, or under any other provision of law prohibiting the purchase of these products by a person under ~~18-21~~ years of age.

(d) In accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the ~~state~~ department shall adopt and publish guidelines for the use of persons under ~~18-21~~ years of age in inspections conducted pursuant to subdivision (c) that shall include, but not be limited to, all of the following:

(1) The ~~state~~ department and any local law enforcement agency under an enforcement delegation contract with the department may use persons under ~~18 years of age who are 15 or 16-21~~ years of age in random inspections to determine if sales of cigarettes or other tobacco products are being made to persons under ~~18-21~~ years of age.

(2) A photograph or video recording, *pursuant to this section*, of the person under ~~18-21~~ years of age shall be taken prior to each inspection or shift of inspections and retained by the department or the local law enforcement agency under an enforcement delegation contract with the department for purposes of verifying appearances.

(3) The ~~state~~ department or a local law enforcement agency under an enforcement delegation contract with the department may use video recording equipment when conducting the inspections to record and document illegal sales or attempted *illegal* sales.

(4) The person under ~~18-21~~ years of age, if questioned about his or her age, need not state his or her actual age but shall present a true and correct identification if verbally asked to present it. Any failure on the part of the person under ~~18-21~~ years of age to provide true and correct identification, if verbally asked for it, shall be a defense to any action pursuant to this section.

1 (5) The person under ~~18-21~~ years of age shall be under the  
2 supervision of a regularly employed peace officer during the  
3 inspection.

4 (6) All persons under ~~18-21~~ years of age used in this manner by  
5 the department or a local law enforcement agency under an  
6 enforcement delegation contract with the department shall display  
7 the appearance of a person under ~~18~~ 21 years of age. It shall be a  
8 defense to any action under this division that the person's  
9 appearance was not that which could be generally expected of a  
10 person under ~~18-21~~ years of age, under the actual circumstances  
11 presented to the seller of ~~the cigarettes~~ *any cigarette* or other  
12 tobacco ~~products~~ *product* at the time of the alleged offense.

13 (7) Following the completion of the sale, the peace officer  
14 accompanying the person under ~~18-21~~ years of age shall reenter  
15 the retail establishment and inform the seller of the random  
16 inspection ~~and following~~. *Following* an attempted sale, the  
17 department shall notify the retail establishment of the inspection.

18 (8) Failure to comply with the procedures set forth in this  
19 subdivision shall be a defense to any action brought pursuant to  
20 this section.

21 (e) Be responsible for ensuring and reporting the state's  
22 compliance with Section 1926 of Title XIX of the federal Public  
23 Health Service Act (42 U.S.C. 300x-26) and any implementing  
24 regulations adopted in relation thereto by the United States  
25 Department of Health and Human Services. A copy of ~~this~~ *any*  
26 report *pursuant to this subdivision* shall be made available to the  
27 Governor and the Legislature.

28 (f) Provide that any civil penalties imposed pursuant to Section  
29 22958 shall be enforced against the owner or owners of the retail  
30 business and not *against* the employees of the business.

31 SEC. 4. Section 22956 of the Business and Professions Code  
32 is amended to read:

33 22956. ~~All persons~~ *A person* engaging in the retail sale of *a*  
34 tobacco ~~products~~ *product* shall check the identification of *a*  
35 tobacco ~~purchasers, to establish~~ *purchaser in order to ascertain*  
36 the age of the purchaser, if the purchaser reasonably appears to be  
37 under ~~18-21~~ years of age.

38 SEC. 5. Section 22958 of the Business and Professions Code  
39 is amended to read:

1 22958. (a) The ~~state~~ department may assess civil penalties  
2 against ~~any~~-a person, firm, or corporation that sells, gives, or in  
3 any way furnishes to another person who is under the age of ~~18-21~~  
4 years, *except a person born before January 1, 1986*, any tobacco,  
5 cigarette, or cigarette papers, or any other instrument or  
6 paraphernalia that is designed for the smoking or ingestion of  
7 tobacco, ~~products~~-a product prepared from tobacco, or any  
8 controlled substance, according to the following schedule: (1) a  
9 civil penalty of from two hundred dollars (\$200) to three hundred  
10 dollars (\$300) for the first violation, (2) a civil penalty of from six  
11 hundred dollars (\$600) to nine hundred dollars (\$900) for the  
12 second violation within a five-year period, (3) a civil penalty of  
13 from one thousand two hundred dollars (\$1,200) to one thousand  
14 eight hundred dollars (\$1,800) for a third violation within a  
15 five-year period, (4) a civil penalty of from three thousand dollars  
16 (\$3,000) to four thousand dollars (\$4,000) for a fourth violation  
17 within a five-year period, or (5) a civil penalty of from five  
18 thousand dollars (\$5,000) to six thousand dollars (\$6,000) for a  
19 fifth or subsequent violation within a five-year period.

20 (b) The ~~state~~ department shall assess penalties in accordance  
21 with the schedule set forth in subdivision (a) against any person,  
22 firm, or corporation that sells, offers for sale, or distributes a  
23 tobacco ~~products~~-product from a cigarette or tobacco products  
24 vending machine, or *against* any person, firm, or corporation that  
25 leases, furnishes, or services these machines in violation of Section  
26 22960.

27 (c) The ~~state~~ department shall assess penalties in accordance  
28 with the schedule set forth in subdivision (a) against any person,  
29 firm, or corporation that advertises or causes to be advertised ~~any~~  
30 a tobacco product on ~~any~~-an outdoor billboard in violation of  
31 Section 22961.

32 (d) If a civil penalty has been assessed pursuant to this section  
33 against ~~any~~-a person, firm, or corporation for a single, specific  
34 violation of this division, the person, firm, or corporation ~~shall~~  
35 *may* not be prosecuted under Section 308 of the Penal Code for a  
36 violation based on the same facts or specific incident for which the  
37 civil penalty was assessed. If ~~any~~-a person, firm, or corporation  
38 has been prosecuted for a single, specific violation of Section 308  
39 of the Penal Code, the person, firm, or corporation ~~shall~~-*may* not  
40 be assessed a civil penalty under this section based on the same



1 facts or specific incident upon which the prosecution under  
2 Section 308 of the Penal Code was based.

3 (e) (1) In the case of a corporation or business with more than  
4 one retail location, to determine the number of accumulated  
5 violations for purposes of the penalty schedule set forth in  
6 subdivision (a), violations of this division by one retail location  
7 ~~shall~~ may not be accumulated against *any* other retail ~~locations~~  
8 *location* of that same corporation or business.

9 (2) In the case of a retail location that operates pursuant to a  
10 franchise, as defined in Section 20001, violations of this division  
11 accumulated and assessed against a prior owner of a single  
12 franchise location ~~shall~~ may not be accumulated against a new  
13 owner of the same single franchise location for purposes of the  
14 penalty schedule set forth in subdivision (a).

15 (f) Proceedings under this section shall be conducted in  
16 accordance with Section 100171 of the Health and Safety Code.

17 SEC. 6. Section 22963 of the Business and Professions Code  
18 is amended to read:

19 22963. (a) The distribution or sale of tobacco products  
20 directly or indirectly to ~~any~~ a person under the age of ~~18~~ 21 years  
21 through the United States Postal Service or through any other  
22 public or private postal or package delivery service at locations,  
23 including, but not limited to, public mailboxes and mailbox stores,  
24 is prohibited.

25 (b) Any person selling or distributing tobacco products directly  
26 to a consumer in the state through the United States Postal Service  
27 or by any other public or private postal or package delivery  
28 service, including orders placed by mail, telephone, facsimile  
29 transmission, or the Internet, shall comply with the following  
30 provisions:

31 (1) (A) Before enrolling a person as a customer or distributing  
32 or selling the tobacco product through any of these means, the  
33 distributor or seller shall verify that the purchaser is ~~18~~ 21 years  
34 of age or older. The distributor or seller shall attempt to match the  
35 name, address, and date of birth provided by the customer to  
36 information contained in records in a database of individuals  
37 whose age has been verified to be ~~18~~ 21 years or older by reference  
38 to an appropriate database of government records kept by the  
39 distributor, a direct marketing firm, or ~~any~~ other entity. The  
40 distributor or seller shall also verify that the billing address on the



1 check or credit card offered for payment by the purchaser matches  
2 the address listed in the ‘database.

3 (B) If the distributor or seller is unable to verify that the  
4 purchaser is ~~18-21~~ years of age or older pursuant to subparagraph  
5 (A), he or she shall require the customer to submit an  
6 age-verification kit consisting of an attestation signed by the  
7 customer that he or she is ~~18-21~~ years of age or older and a copy  
8 of a valid form of government identification. For the purposes of  
9 this section, a valid form of government identification includes a  
10 driver’s license, state identification card, passport, an official  
11 naturalization or immigration document, such as an alien  
12 registration receipt card (commonly known as a “green card”) or  
13 an immigrant visa, or military identification. The distributor or  
14 seller shall also verify that the billing address on the check or credit  
15 card provided by the consumer matches the address listed in the  
16 form of government identification.

17 (2) The distributor or seller shall impose a two-carton  
18 minimum on each order of cigarettes, and shall require payment  
19 for the purchase of any tobacco product to be made by personal  
20 check of the purchaser or the purchaser’s credit card. No money  
21 order or cash payment ~~shall~~ *may* be received or permitted. The  
22 distributor or seller shall submit to each credit card acquiring  
23 company with which it has credit card sales identification  
24 information in an appropriate form and format so that the words  
25 “tobacco product” may be printed in the purchaser’s credit card  
26 statement when a purchase of a tobacco product is made by credit  
27 card payment.

28 (3) The distributor or seller shall make a telephone call after 5  
29 p.m. to the purchaser confirming the order prior to shipping the  
30 tobacco products. The telephone call may be a person-to-person  
31 call or a recorded message. The distributor or seller is not required  
32 to speak directly with a person and may leave a message on an  
33 answering machine or by voice mail.

34 (4) The distributor or seller shall deliver the tobacco product to  
35 the purchaser’s verified billing address on the check or credit card  
36 used for payment. ~~No delivery~~ *A product described under this*  
37 ~~section shall be permitted~~ *may not be delivered to any* a post office  
38 box.

39 (c) Notwithstanding subdivisions (a) and (b), if a distributor or  
40 seller complies with all of the requirements of this section and a

1 ~~minor~~ person under the age of 21 years, except a person born  
2 before January 1, 1986, obtains a tobacco product by any of the  
3 means described in subdivision (b), the seller or distributor is not  
4 in violation of this section.

5 (d) For the purposes of the enforcement of this section pursuant  
6 to Section 22958, the acts of the United States Postal Service or  
7 other common carrier when engaged in the business of  
8 transporting and delivering packages for others, and the acts of a  
9 person, whether compensated or not, who transports or delivers a  
10 package for another person without any reason to know of the  
11 package's contents, are not unlawful and are not subject to civil  
12 penalties.

13 (e) (1) For the purposes of this section, a "distributor" is ~~any~~  
14 a person or entity, within or outside the state, who agrees to  
15 distribute tobacco products to a customer within the state. The  
16 United States Postal Service or any other public or private postal  
17 or package delivery service ~~are~~ is not ~~distributors~~ a distributor  
18 within the meaning of this section.

19 (2) For the purpose of this section, a "seller" is ~~any~~ a person  
20 or entity, within or outside the state, who agrees to sell tobacco  
21 products to a customer within the state. The United States Postal  
22 Service or any other public or private postal or package delivery  
23 service ~~are~~ is not ~~sellers~~ a seller within the meaning of this section.

24 (3) For the purpose of this section, a "carton" is a package or  
25 container that contains 200 cigarettes.

26 (f) A district attorney, city attorney, or the Attorney General  
27 may assess civil penalties against ~~any~~ a person, firm, corporation,  
28 or other entity that violates this section, according to the following  
29 schedule:

30 (1) A civil penalty of not less than one thousand dollars  
31 (\$1,000) and not more than two thousand dollars (\$2,000) for the  
32 first violation.

33 (2) A civil penalty of not less than two thousand five hundred  
34 dollars (\$2,500) and not more than three thousand five hundred  
35 dollars (\$3,500) for the second violation.

36 (3) A civil penalty of not less than four thousand dollars  
37 (\$4,000) and not more than five thousand dollars (\$5,000) for the  
38 third violation within a five-year period.

(4) A civil penalty of not less than five thousand five hundred dollars (\$5,500) and not more than six thousand five hundred dollars (\$6,500) for the fourth violation within a five-year period.

(5) A civil penalty of ten thousand dollars (\$10,000) for a fifth or subsequent violation within a five-year period.

SEC. 7. Section 22964 is added to the Business and Professions Code, to read:

22964. The provisions of this division may not be construed to prohibit a city or county from enacting laws with respect to the legal age to purchase or possess a tobacco product as long as they are at least as stringent as state law.

SEC. 8. Section 308 of the Penal Code is amended to read:

308. (a) (1) Every person, firm, or corporation ~~which~~ *that* knowingly, or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under the age of ~~18~~ 21 years, *except for a person born before January 1, 1986*, any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, ~~products~~ *any product* prepared from tobacco, or any controlled substance, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars (\$200) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for the third offense.

~~Notwithstanding~~

(2) *Notwithstanding* Section 1464 or any other provision of law, 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the office of the city attorney, county counsel, or district ~~attorney, whoever~~ *attorney who* is responsible for bringing the successful action, and 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the city or county for the administration and cost of the community service work component provided in subdivision (b).

~~Proof~~

(3) *Proof* that a defendant, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of majority shall be *a* defense to any action brought pursuant to this

subdivision. Evidence of ~~majority of~~ *that a person is 21 years of age or older or was born before January 1, 1986, may be a facsimile of or a reasonable likeness of a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the Armed Forces indicating the person is 21 years of age or older or was born before January 1, 1986.*

~~For~~

(4) *For purposes of this section, the person liable for selling or furnishing tobacco products to ~~minors~~ a person under the age of 21 years or a person born on or after January 1, 1986 by a tobacco vending machine shall be the person authorizing the installation or placement of the tobacco vending machine upon premises he or she manages or otherwise controls and under circumstances in which he or she has knowledge, or should otherwise have grounds for knowledge, that the tobacco vending machine will be utilized by ~~minors~~ by a person under the age of 21 years or a person born on or after January 1, 1986.*

(b) Every person under the age of ~~18~~ 21 years, *except for a person born before January 1, 1986, who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, ~~products~~ any product prepared from tobacco, or any controlled substance shall, upon conviction, be punished by a fine of seventy-five dollars (\$75) or 30 hours of community service work.*

(c) Every person, firm, or corporation ~~which~~ *that* sells, or deals in tobacco or any preparation thereof, shall post conspicuously, and keep so posted in his, her, or their place of business, at each point of purchase, the notice required pursuant to subdivision (b) of Section 22952 of the Business and Professions Code, and any person failing to do so shall, upon conviction, be punished by a fine of ten dollars (\$10) for the first offense and fifty dollars (\$50) for each succeeding ~~violation of this provision~~ *offense*, or by imprisonment for not more than 30 days.

(d) For purposes of determining the liability of ~~persons~~ *a person, ~~firms~~ firm, or ~~corporations~~ corporation* controlling franchises or business operations in multiple locations, for the

1 second and subsequent violations of this section; each individual  
2 franchise or business location shall be deemed a separate entity.

3 (e) It is the Legislature's intent to regulate the subject matter of  
4 this section. As a result, no city, county, or city and county ~~shall~~  
5 *may* adopt ~~any~~ *an* ordinance or regulation inconsistent with this  
6 section.

7 (f) Notwithstanding any other provision of this section, the  
8 Director of Corrections may sell or supply tobacco and tobacco  
9 products, including cigarettes and cigarette papers, to any person  
10 confined in any institution or facility under his or her jurisdiction  
11 who has attained the age of 16 years, if the parent or guardian of  
12 the person consents thereto, and may permit smoking by the person  
13 in any institution or facility. No officer or employee of the  
14 Department of Corrections shall be considered to have violated  
15 this section by any act authorized by this subdivision.

16 SEC. 9. No reimbursement is required by this act pursuant to  
17 Section 6 of Article XIII B of the California Constitution because  
18 the only costs that may be incurred by a local agency or school  
19 district will be incurred because this act creates a new crime or  
20 infraction, eliminates a crime or infraction, or changes the penalty  
21 for a crime or infraction, within the meaning of Section 17556 of  
22 the Government Code, or changes the definition of a crime within  
23 the meaning of Section 6 of Article XIII B of the California  
24 Constitution.

